

The Honorable Brian D. Lynch  
Hearing Date: November 7, 2018  
Hearing Time: 9:00 A.M.  
Chapter 7  
Location: Tacoma

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re:

IAN H. SCHUMACHER and  
KERI J. SCHUMACHER,

Debtors.

No. 17-43172

T. GARRETT CONSTRUCTION  
INCORPORATED'S OBJECTION TO  
DEBTORS' MOTION TO ABANDON  
DEBTORS' REAL PROPERTY

COMES NOW judgment creditor T. Garrett Construction Incorporated, by and through its attorney, and objects to the Schumachers' motion for the trustee to abandon the Schumachers' house.

11 U.S.C. § 554(b) provides that "[o]n request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In other words, to obtain the abandonment of property from a bankruptcy estate, the moving party must show either that (1) the property is burdensome to the estate, or (2) the property is of inconsequential value and benefit to the estate. *Johnston v. Webster (In re Johnston)*, 49 F.3d 538, 540 (9th Cir. 1995); *Vu v. Kendall (In re Vu)*, 245 B.R. 644, 647 (9th Cir. BAP 2000). The burden of proof is on the moving party. *Northview Motors, Inc. v. Chrysler Motors*

T. GARRETT CONSTRUCTION INCORPORATED'S OBJECTION TO  
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1 Corp., 186 F.3d 346, 350 (3d Cir. 1999). A bankruptcy court's order compelling the  
2 abandonment of property from the estate:

3 is the exception, not the rule. Abandonment should only be compelled in order  
4 to help the creditors by assuring some benefit in the administration of each  
asset . . . . **Absent an attempt by the trustee to churn property worthless to  
the estate just to increase fees, abandonment should rarely be ordered.**

5 *In re Vu*, 245 B.R. at 647 (quoting *Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. &*  
6 *Tool Co.)*, 816 F.2d 238, 246 (6th Cir. 1987) (Emphasis added).

7 The fair market value of the Schumachers' home is disputed. In October 2017, Gerald  
8 Cameron of Spectrum Real Estate Services appraised the home at \$595,000. [Decl. Linville].  
9 Mr. Cameron's appraisal took into account numerous alleged construction defects that the  
10 Schumachers informed Mr. Cameron of while he viewed their house for the appraisal. [Decl.  
11 Linville, pg. 9 of Spectrum's Appraisal].  
12

13 The Pierce County Assessor values the Schumachers' house at \$602,700 for 2019.  
14 [Decl. Linville]. Concededly, is unlikely that the Pierce County Assessor considered the  
15 Schumachers' alleged construction defects.

16 The Schumachers do not meet their burden of proof of showing that the house is  
17 burdensome to the estate or that is of inconsequential value and benefit to the estate.  
18 Although the Schumachers provide a list of alleged construction defects, they provide no  
19 evidence of the cost to repair the defects that they are complaining of. They provide no bids  
20 or proposals from contractors to repair the defects (assuming the defects even exist).  
21

22 Even giving the Schumachers the benefit of the doubt that the defects exist and that  
23 the defects lower the fair market value of the home, the most the Schumachers can show is  
24 that the house, at its current listing price of \$589,950, and which has been on the market for 7  
25 ½ months, has a fair market value at some point lower than \$589,950.

1 T. Garrett Construction Incorporated concedes that the house's fair market value is  
2 less than \$589,950, judging by the fact that the house has been on the market for 7 ½ months.  
3 T. Garrett Construction Incorporated would like to see the trustee's real estate agent lower the  
4 asking price of the house.

5 For the foregoing reasons, the Court should deny the Schumachers' motion.  
6

7 DATED this 29<sup>th</sup> day of October 2018

8 LINVILLE LAW FIRM PLLC

9 /s/ David E. Linville

10 David E. Linville, WSBA #31017

11 Attorneys for T. Garrett Construction Incorporated  
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